

Remarks /Arguments

Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 to 33 and 35 to 37 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959). Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24 to 26, 28 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959). Claims 3, 8, 11, 14, 16, 27, 33 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and LaBrosse (US 6,052,959). Claims 1 to 3, 24, 30 and 31 have been amended. Reconsideration of the application is respectfully requested.

**The Rejection of Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 and 37
in view of Gust, Smith and LaBrosse**

Claims 1 to 4, 6 to 9, 12 to 16, 24, 25, 30 and 37 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959).

Claim 1 now recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits."

Claim 2 now recites: "A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation; and

a second outward rim flange extending from the bottom of the hood for covering the window well."

Claim 3 now recites: “A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation and comprising a plurality of securing members; and

a second outward rim flange extending from the bottom of the hood for covering the window well.”

Claim 24 now recites: “A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood connected to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation; and

a second outward rim flange extending from the bottom of the hood for covering the window well.”

Claim 30 now recites: “A protector for a window well comprising:

a single-piece structure including a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits.”

Claims 1 to 3, 24 and 30 have been amended to recite “a plurality of slits angled through the first portion”. Support can be found in Fig. 4 and paragraph [0018], for example.

In rejecting claims 1 to 3, 24 and 30, the Examiner recognizes that Gust fails to disclose the claimed plurality of slits in the hood, and looks to Smith and LaBrosse to cure this deficiency.

U.S. Patent No. 3,123,868 to Gust purports to describe a window well cover. In particular, Gust explains:

“Mounted circumferentially in the lower portion of the dome 12 . . . is a substantially U-shaped or semicircular base bar 13 of suitable metal” (Gust, col. 1, lines 65 to 68).

“The bar 13 is substantially T-shaped in cross-section, said bar including on its outer periphery a circumferentially extending flange 15” (Gust, col. 1, lines 70 to 73).

U.S. Patent No. 3,046,613 to Smith also relates to a window well cover. Smith explains that:

“In the arrangement illustrated in Figures 1 and 2 it is preferred that the side wall 32 shall be of a perforated metallic material as for example, expanded metal of the expanded lathe type or sheet metal having apertures, passages, or slots therethrough of a screen-like or grid-like character” (Smith, col. 3, lines 21 to 27).

“By virtue of the periphery of the cover overlying the upper edge of the side wall 32 of the window well enclosure, the cover serves to protect the ingress of rain through the ventilating openings in this side wall. In turn, the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24 of the window well retaining wall 22 further preventing rain being blown into the well.” (Smith, col. 3, lines 14 to 21).

“A further modified construction is illustrated in Figure 5 In the arrangement of Figure 5, an “apertured metallic side wall of the enclosure operates as a protective means for the well while the plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from ingress of rain, snow or the like” (Smith, see col. 3, lines 62-63, 69- 74).

U.S. Patent No. 6,052,959 to LaBrosse does not relate to a window well cover at all. Rather, LaBrosse “relates to a device for releasing trapped moisture sealed within a structure by a STYROFOAM-backed exterior insulation and finishing system” (LaBrosse, col. 1, lines 7 to 10). A stated objective of LaBrosse “is to provide a moisture vent for use with exterior insulation and finishing systems (LaBrosse, col. 1, lines 48 to 50). Another alleged object of LaBrosse is “to provide ventilation to a structure for the prevention of an accumulation of moisture on a backing of an exterior insulation and finishing system” (LaBrosse, col. 1, lines 51 to 54). Yet another alleged object of LaBrosse is “to prevent the entrance of termites into a backing of an exterior insulation and finishing system” (LaBrosse, col. 1, lines 55 to 57).

It is respectfully submitted that it would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Gust's protector to show "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as now claimed in claims 1 to 3, 24 and 30. None of the cited references teach or disclose this feature.

Applicants respectfully point out that, in the response dated January 3, 2007 to the previous Office Action, Applicants were not attacking each cited reference individually but rather merely showing that not all of the elements claimed in the present invention are taught or disclosed by the cited references and that it thus would not have been obvious to one having ordinary skill in the art at the time of invention to modify Gust in view of Smith and LaBrosse as asserted in the Office Action, even if all the cited references were combined. However, Applicants respectfully maintain that there was no teaching, suggestion or motivation to combine the cited references found in the references themselves or in the knowledge generally available to one of having ordinary skill in the art at the time of invention, and that the references themselves actually teach away from so combining.

First, it is respectfully submitted that none of the cited references teach or disclose "the first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as claimed in claims 1 to 3, 24 and 30 of the present invention.

As admitted in the Office Action on the bottom of page 2, for example, "Gust does not show the first portion comprising a plurality of slits."

Smith also does not teach or disclose a first portion of the hood . . . comprising a plurality of slits, and certainly does not teach or disclose a "first portion of the hood . . . further comprising a plurality of slits angled through the first portion" as now claimed. Rather, Smith clearly states that "it is preferred that the side wall 32 shall be of a perforated metallic material . . . having apertures, passages, or slots therethrough of a screen-like or grid-like character." Figures 1, 2, 4, 6 and 7 of Smith clearly show the screen-like or grid-like character of Smith, which is clearly

not the same as the slits of the present invention. Moreover, in the arrangement of Figure 5 of Smith, ventilation of the window well is not provided for at all since a “plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from ingress of rain, snow or the like” (see Smith, col. 3, lines 71 to 74). Thus, not only does Smith not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as recited in claims 1 to 3, 24 and 30 of the present invention, but Smith actually teaches away from using plastic for ventilation of a window well thereby discouraging one skilled in the art to combine Gust with Smith.

With respect to LaBrosse, it is respectfully submitted that LaBrosse also does not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as claimed in claims 1 to 3, 24 and 30. Rather, in LaBrosse, “vents 22 have louvers 46 which extend outwardly with respect to the vent side 18” and which “assist in preventing environmental water, such as rain, from entering the ventilation cavity 30” (see, e.g. LaBrosse, col. 3, lines 62 to 67). “In the embodiment shown in FIG. 4 [of LaBrosse], . . . the vents 22 are elongated and narrow . . . to provide ventilation, but resist environmental water from entering the ventilation cavity 30 therethrough” when louvers are not used (see, e.g. LaBrosse, col. 4, lines 1 to 6). The present invention does not rely on louvers or vents that are elongated and narrow to provide ventilation while protecting against rain and other forms of precipitation from entering the window well. Rather, as is clear from Figure 4 and paragraph [0018] of the present invention, preferably, the slits 50 are angled so that liquid that enters the slits exits the slits without entering the window well cover. For example, an angle 55 defined by the intersection of the bottom of the slits 50 with the inside of the window well cover 10 can be less than 90 degrees. See, e.g. Figure 4 and paragraph [0018] of the present invention. Louvers 46 in LaBrosse are not slits angled through the first portion as claimed but rather extend outwardly with respect to vent side 18. See, e.g. LaBrosse, col. 3, lines 63 to 64. LaBrosse also does not teach or disclose at all vents 22 being angled through a first portion, such as vent side 18, for example.

Second, even if all of the claimed limitations were found in the cited references, which Applicants respectfully maintain they are not, LaBrosse does not at all relate to window well

covers nor even to window wells or windows. Rather, LaBrosse “relates to a device for releasing trapped moisture sealed within a structure by a STYROFOAM-backed exterior insulation and finishing system” (Labrosse, col. 1, lines 7 to 10). LaBrosse is in a completely different and non-analogous art than the present invention and therefore one having ordinary skill in the art of window well covers (or even window wells or windows) at the time of invention would not look to LaBrosse to modify Gust’s protector as suggested in the Office Action. Moreover, Smith clearly addresses the problem of protecting against the ingress of rain “by virtue of the periphery of the cover overlying the upper edge of the side wall 32” and because “the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24” (see Smith, col. 3, lines 14 to 21), further supporting that one having ordinary skill in the art at the time of invention would not look to LaBrosse to modify Gust’s protector as suggested in the Office Action.

Withdrawal of the rejection of claims 1, 2, 3, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959) is therefore respectfully requested. As claims 4, 6, 9, 12, 25 and 37 depend from and incorporate the limitations of claim 1, claims 7, 13 and 15 depend from and incorporate the limitations of claim 2, and claims 8, 14 and 16 depend from and incorporate the limitations of claim 3, withdrawal of the Examiner’s rejection of these claims also is respectfully requested.

With further respect to claims 12 to 14, which recite “wherein the hood is constructed by injection molding”, it is respectfully submitted that these claims claim a product-by-process, and that the recitation of an injection molding process must be accorded patentable weight because a window well cover manufactured via injection molding as claimed *is substantially different in structure* from the window well covers in the applied prior art. *MPEP 2113*. As explained in *MPEP 2113*:

The **structure** implied by the process steps **should be considered** when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.

Neither Gust, Smith nor LaBrosse teach or disclose using an injection molding process. It is asserted in the Office Action on page 8 that the products reasonably appear to be identical or slightly different from each due to their different manufacturing processes and therefore asserts that the claims are properly treated under the Product by Process limitation policy. However, merely because products may *appear* to be identical or slightly different, products constructed by different processes may and often are substantially different in structure, possessing distinctive structural characteristics. This is particularly so with respect to products constructed by injection molding, which may and typically does substantially affect a products structure, such as with respect to the product's strength-to-weight ratio, hardness and uniformity in terms of thickness, strength, transparency, etc., for example. This is partially a result of injection molding generally allowing for higher pressure to be used during the manufacturing process than with more conventional techniques of manufacturing plastics, such as blow molding, for example. Withdrawal of the rejections to claims 12 to 14 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and LaBrosse thus is respectfully requested for this reason as well.

With further respect to claims 15 and 16, which recite "wherein the second outward rim flange covers the entire window well", it is respectfully submitted that Gust does not teach or disclose an outward rim flange that covers the entire window well as claimed, as asserted in the Office Action. Flange 15 in Gust circumferentially *extends from the outer periphery* of a substantially U-shaped or semicircular bar 13, which is substantially T-shaped in cross section (see Gust, col. 1, lines 66 to 72 and Fig. 3). As explained in [0014] of the present specification, in a preferred embodiment of the present invention, "the second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well" (see paragraph [0014] of the present invention, for example). As Flange 15 of Gust circumferentially *extends from the outer periphery* of bar 13, Flange 15 in Gust does not cover the entire window well as claimed. Flange 15 does not extend under the hood so as to cover the entire window well as claimed. Withdrawal of the rejections to claims 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and LaBrosse thus is respectfully requested for this reason as well.

The Rejection of Claim 31 in view of Gust, Smith and LaBrosse

Claim 31 also stands rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959).

Claim 31 now recites: “A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the first portion and the slits;

a hinge coupled to the second portion.”

Claim 31 has been amended to recite “a plurality of slits angled through the first portion”. Support can be found in Fig. 4 and paragraph [0018], for example. As such, it is respectfully submitted that, for at least the reasons set forth above with regard to claims 1 to 3, 24 and 30, the Examiner’s rejection of claim 31 should be withdrawn.

The Rejection of Claims 32, 33, 35 and 36 in view of Gust, Smith and LaBrosse

Claims 32, 33, 35 and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gust (US 3,123,868) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959).

Claims 32, 33, 35, and 36 recite:

“32. The protector of claim 2, further comprising a hinge secured to the first outward rim flange.”

“33. The protector of claim 3, further comprising a hinge secured to the first outward rim flange.”

“35. The protector of claim 24, further comprising a hinge secured to the first outward rim flange.”

“36. The protector of claim 30, further comprising a hinge secured to the first outward rim flange.”

For the reasons set forth above with regard to claims 2, 3, 24 and 30, withdrawal of the rejection of claims 31, 32, 33, 35 and 36 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and LaBrosse is respectfully requested.

In addition, it is respectfully submitted that Smith does not teach or disclose “a hinge secured to the first outward rim flange” as claimed. Rather, in Smith, “cover 34 is provided with an embracing metallic reinforcing rim 44 which is C-shaped in cross section and which is received in a channel member 46 carried by a bracket 48 which is secured as by bolts 50 to the wall 10.” (Smith, col. 3, lines 7 to 11). Reinforcing rim 44 is not an outward rim flange to which a hinge is secured as claimed, as asserted in the Office Action on page 9. Rather, reinforcing rim 44 forms part of the hinge itself, as evident from it being C-shaped in cross-section and being received in a channel member carried by bracket 48. Indeed, Smith characterizes the arrangement of elements 44, 46 and 48 as a piano type of hinge: “Thus, there is provided a piano type of hinge whereby the entire cover 34 may be raised or lowered” (see, e.g. Smith, col. 2, lines 11 to 13). In contrast, the first outward rim flange of the present invention does not form part of the hinge itself, as is clear from claims 32, 33, 35 and 36 for example. See also Fig. 5 and paragraph [0021], for example. Withdrawal of the rejection of claims 32, 33, 35 and 36 under 35 U.S.C. §103(a) as being unpatentable over Gust in view of Smith and LaBrosse thus is respectfully requested for this reason as well.

**The Rejection of Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24, 25,
26, 28 and 30 in view of Mackes, Smith and LaBrosse**

Claims 1, 2, 4 to 7, 9, 10, 12, 13, 15, 24, 25, 26, 28 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959).

Claims 1, 2, 24 and 30 have been amended to recite “a plurality of slits angled through the first portion”. Support can be found in Fig. 4 and paragraph [0018], for example.

In rejecting these claims, the Examiner recognizes that Mackes fails to disclose the claimed plurality of slits in the hood, and looks to Smith and LaBrosse to cure this deficiency.

Mackes (US 4,330,500) purports to describe methods of manufacturing a double-flanged window well cover. Mackes explains “Since prior producers of window well covers from drawn thermoplastic sheets have been unable to produce a base flange, the unit has a reinforcing strip 28 at the base edge 20’.” (Mackes, col. 3, lines 60 to 64). Smith (US 3,046,613) and LaBrosse (US 6,052,959) are discussed above.

It is respectfully submitted that it would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes’s protector to show “the first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as now claimed in claims 1, 2, 24 and 30. None of the cited references teach or disclose this feature.

As admitted in the Office Action on page 5, for example, “Mackes does not show the first portion comprising a plurality of slits.”

Smith also does not teach or disclose a first portion of the hood . . . comprising a plurality of slits, and certainly does not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as now claimed. Rather, Smith clearly states that “it is preferred that the side wall 32 shall be of a perforated metallic material . . . having apertures, passages, or slots therethrough of a screen-like or grid-like character.” Figures 1, 2, 4, 6 and 7 of Smith clearly show the screen-like or grid-like character of Smith, which is clearly not the same as the slits of the present invention. Moreover, in the arrangement of Figure 5 of Smith, ventilation of the window well is not provided for at all since a “plastic inner wall serves to close the perforations in the outer wall and thus completely protect the window well from ingress of rain, snow or the like” (see Smith, col. 3, lines 71 to 74). Thus, not only does Smith not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as recited in claims 1, 2, 24 and 30 of the present invention, but Smith

actually teaches away from using plastic for ventilation of a window well thereby discouraging one skilled in the art to combine Mackes with Smith.

With respect to LaBrosse, it is respectfully submitted that LaBrosse also does not teach or disclose a “first portion of the hood . . . further comprising a plurality of slits angled through the first portion” as claimed in claims 1, 2, 24 and 30. Rather, in LaBrosse, “vents 22 have louvers 46 which extend outwardly with respect to the vent side 18” and which “assist in preventing environmental water, such as rain, from entering the ventilation cavity 30” (see, e.g. LaBrosse, col. 3, lines 62 to 67). “In the embodiment shown in FIG. 4 [of LaBrosse], . . . the vents 22 are elongated and narrow . . . to provide ventilation, but resist environmental water from entering the ventilation cavity 30 therethrough” when louvers are not used (see, e.g. LaBrosse, col. 4, lines 1 to 6). The present invention does not rely on louvers or vents that are elongated and narrow to provide ventilation while protecting against rain and other forms of precipitation from entering the window well. Rather, as is clear from Figure 4 and paragraph [0018] of the present invention, preferably, the slits 50 are angled so that liquid that enters the slits exits the slits without entering the window well cover. For example, an angle 55 defined by the intersection of the bottom of the slits 50 with the inside of the window well cover 10 can be less than 90 degrees. See, e.g. Figure 4 and paragraph [0018] of the present invention. Louvers 46 in LaBrosse are not slits angled through the first portion as claimed but rather extend outwardly with respect to vent side 18. See, e.g. LaBrosse, col. 3, lines 63 to 64. LaBrosse also does not teach or disclose at all vents 22 being angled through a first portion, such as vent side 18, for example.

Second, even if all of the claimed limitations were found in the cited references, which Applicants respectfully maintain they are not, LaBrosse does not at all relate to window well covers nor even to window wells or windows. Rather, LaBrosse “relates to a device for releasing trapped moisture sealed within a structure by a STYROFOAM-backed exterior insulation and finishing system” (Labrosse, col. 1, lines 7 to 10). LaBrosse is in a completely different and non-analogous art than the present invention and therefore one having ordinary skill in the art of window well covers (or even window wells or windows) at the time of invention would not look to LaBrosse to modify Mackes’s cover as suggested in the Office Action. Moreover, Smith

clearly addresses the problem of protecting against the ingress of rain “by virtue of the periphery of the cover overlying the upper edge of the side wall 32” and because “the side wall by reason of its upwardly and outwardly flaring contour overhangs and projects laterally beyond the rim 24” (see Smith, col. 3, lines 14 to 21), further supporting that one having ordinary skill in the art at the time of invention would not look to LaBrosse to modify Mackes’s cover as suggested in the Office Action.

Withdrawal of the rejections of claims 1, 2, 24 and 30 under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613) and LaBrosse (US 6,052,959) is therefore respectfully requested. As claims 4 to 7, 9, 10, 12, 13, 15, 25, 26 and 28 each depend from one of claims 1, 2 and 24, withdrawal of the rejection of these claims also is respectfully requested.

With further respect to claims 5, 25 and 28, it is respectfully submitted that, for additional reasons to those heretofore discussed, one skilled in the art at the time of invention would not have looked towards either Smith or LaBrosse to modify Mackes as suggested in the Office Action on the bottom of page 9 and the top of page 10 since Mackes actually teaches away from modifying its window well cover to incorporate slits or openings of any type. Mackes asserts that an object of its alleged invention “is to provide a method for making an improved window well cover having an integral flange at both the front and rear of the bubble” (Mackes, col. 2, lines 40 to 43). Mackes explains that “the [allegedly] improved method of producing window well covers includes drawing operations in which a sheet of heated thermoplastic resin is drawn into a female mold or onto a male mold [and] vacuum and/or air pressure may be used to bring the sheet snugly against the contours of the mold” (Mackes, col. 4, lines 9 to 14). “The wall flanges 24 are at the base of the bubble BB and are trimmed flashing edges of the plastic sheet from which the bubble BB is drawn” (Mackes, col. 4, lines 28 to 30). As such, Mackes teaches away from modifying its window well cover to incorporate slits or openings of any type since such would adversely affect the preferred manufacturing operation and its use of vacuum and/or air pressure that is described integrally with respect to the resulting structure of its cover.

With further respect to claims 12 and 13, which recite “wherein the hood is constructed by injection molding”, it is respectfully submitted that these claims claim a product-by-process, and that the recitation of an injection molding process must be accorded patentable weight because a window well cover manufactured via injection molding as claimed *is substantially different in structure* from the window well covers in the applied prior art. *MPEP 2113*. Neither Mackes, Smith nor LaBrosse teach or disclose using an injection molding process. It is asserted in the Office Action on page 8 that the products reasonably appear to be identical or slightly different from each due to their different manufacturing processes and therefore asserts that the claims are properly treated under the Product by Process limitation policy. However, merely because products may *appear* to be identical or slightly different, products constructed by different processes may and often are substantially different in structure, possessing distinctive structural characteristics. This is particularly so with respect to products constructed by injection molding, which may and typically does substantially affect a products structure, such as with respect to the product’s strength-to-weight ratio, hardness and uniformity in terms of thickness, strength, transparency, etc., for example. This is partially a result of injection molding generally allowing for higher pressure to be used during the manufacturing process than with more conventional techniques of manufacturing plastics, such as blow molding, for example. Moreover, as discussed above with respect to the rejections to claims 5, 25 and 28, Mackes discusses how a drawing operation produces its flanges: “The wall flanges 24 are at the base of the bubble BB and are trimmed flashing edges of the plastic sheet from which the bubble BB is drawn” (Mackes, col. 4, lines 28 to 30). Withdrawal of the rejections to claims 12 and 13 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith and LaBrosse is therefore respectfully requested for this reason as well.

With further respect to claim 15, which recites “[t]he protector as described in claim 2 wherein the second outward rim flange covers the entire window well”, it is respectfully submitted that Mackes does not teach or disclose an outward rim flange that covers the entire window well as claimed. Reinforcing strip 28 at the base edge 20' of Mackes is not an outward rim flange that covers the entire window well as asserted in the Office Action. As explained in [0014] of the present specification, in a preferred embodiment of the present invention, “the

second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well” (see paragraph [0014] of the present invention, for example). Reinforcing strip 28 at the base edge 20' of Mackes does not extend under the window well cover so as to cover the entire window well. Withdrawal of the rejection of claim 15 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith and LaBrosse thus is respectfully requested for this reason as well.

**The Rejection of Claims 3, 8, 11, 14, 16, 27, 33 and 38
in view of Mackes, Smith, Hoyt and LaBrosse**

Claims 3, 8, 11, 14, 16, 27, 33 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and LaBrosse (US 6,052,959).

Claim 3 now recites: “A protector for a window well comprising:

a hood formed in the shape of quarter sphere comprising a first and second portion, the first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion, the second portion sloped to deflect precipitation from the slits;

a first outward rim flange extending from the top of the hood for securing the hood to a foundation and comprising a plurality of securing members; and

a second outward rim flange extending from the bottom of the hood for covering the window well.”

Mackes (US 4,330,500), Smith (US 3,046,613) and LaBrosse (US 6,052,959) are discussed above.

Hoyt (US 3,413,769) purports to describe a basement drain. In Hoyt, holder 94 “is an elongated piece of material suitably fixed to an inner wall having an outwardly extending flange 98 under which the upper end 80 of the passage-forming member 40 is tucked under during installation” (Hoyt, col. 2, lines 35 to 39).

It is respectfully submitted that it would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Mackes's protector to show a plurality of slits in view of Smith, Hoyt and LaBrosse as asserted in the Office Action. As discussed above with respect to claims 1, 2, 24 and 30, neither Smith nor LaBrosse teach or disclose a "first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion" as claimed. Hoyt also does not teach or disclose "first portion of the hood about perpendicular to a base and further comprising a plurality of slits angled through the first portion" as claimed, nor has such been asserted in the Office Action. In response to the assertion in the Office Action on page 10 that "Hoyt is used to teach a plurality of securing members (940 [sic] securing the first rim flange to the wall . . .)", Applicants respectfully point out that Hoyt does not show a **plurality** of holder 94 at all. Rather, Hoyt shows "a holder 94 which is an elongated piece of material . . ." (Hoyt, col. 2, lines 35 to 39). The use of "a", "an" and "piece" make clear that there is only one holder 94. Furthermore, Hoyt, allegedly showing a basement drain, is in a completely different and non-analogous art than that of the window well protector of the present invention. Thus, even if Hoyt did show a plurality of securing members, which Applicants respectfully maintain it does not, one skilled in the art of window well protectors at the time of invention would not have looked to Hoyt to modify Mackes as asserted in the Office Action. Withdrawal of the rejection of claim 3 under 35 U.S.C. §103(a) as being unpatentable over Mackes (US 4,330,500) in view of Smith (US 3,046,613), Hoyt (US 3,413,769) and LaBrosse (US 6,052,959) is therefore respectfully requested. As claims 8, 11, 14, 16, 27, 33 and 38 depend from claim 3, withdrawal of the Examiner's rejection of these claims is also requested.

With further respect to claim 16, which recites "[t]he protector as described in claim 3 wherein the second outward rim flange covers the entire window well", it is respectfully submitted that Mackes does not teach or disclose an outward rim flange that covers the entire window well as claimed. Reinforcing strip 28 at the base edge 20' of Mackes is **not** an outward rim flange that covers the entire window well as asserted in the Office Action. As explained in [0014] of the present specification, in a preferred embodiment of the present invention, "the

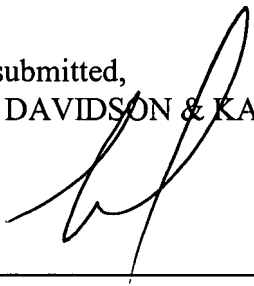
second outward rim flange 70 can extend under the protective hood 20 so as to cover the entire window well” (see paragraph [0014] of the present invention, for example). Reinforcing strip 28 at the base edge 20' of Mackes does not extend under the window well cover so as to cover the entire window well. Withdrawal of the rejection of claim 16 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith, Hoyt and LaBrosse thus is respectfully requested for this reason as well.

With further respect to claim 33 which recites: “The protector of claim 3, further comprising a hinge secured to the first outward rim flange”, it is respectfully submitted that Smith does not teach or disclose “a hinge secured to the first outward rim flange” as claimed. As discussed above, reinforcing rim 44 of Smith is not an outward rim flange to which a hinge is secured as claimed, as asserted in the Office Action on page 9, but rather reinforcing rim 44 forms part of the hinge itself. Withdrawal of the rejection to claim 33 under 35 U.S.C. §103(a) as being unpatentable over Mackes in view of Smith, Hoyt and LaBrosse thus is respectfully requested for this reason as well.

Conclusion

The present application is respectfully submitted as being in condition for allowance and applicants respectfully request such action.

Respectfully submitted,
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